

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CHARLES BARNARD et al.,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT et al.,

Defendants.

2:03-cv-01524-RCJ-LRL

ORDER

This case arises out of a SWAT team raid of Plaintiffs Charles and Rita Barnard's home in Henderson, Nevada on December 8, 2001.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs sued the Las Vegas Metropolitan Police Department ("LVMPD") and four officers thereof on seven causes of action: (1) Civil Rights Violations Pursuant to 42 U.S.C. § 1983 (Illegal Search and Seizure and Excessive Force Under the Fourth and Fourteenth Amendments); (2) Battery; (3) Intentional Infliction of Emotional Distress; (4) Civil Conspiracy; (5) Respondeat Superior; (6) Negligence; and (7) Loss of Consortium (Rita Barnard only). (*See* Am. Compl., May 26, 2004, ECF No. 10).

Former Judge Brian E. Sandoval granted summary judgment to Defendants. (*See* Summ. J. Order, Mar. 9, 2007, ECF No. 57). In an unpublished opinion, the Court of Appeals affirmed as to the illegal search and seizure and municipal liability claims, reversed as to the excessive force claim, and remanded the state law claims for an analysis of discretionary act immunity

1 under *Martinez v. Maruszczak*, 168 P.3d 720 (Nev. 2007). (*See* Mem. Op., Feb. 4, 2009, ECF
2 No. 70). The Court then granted the ensuing summary judgment motion as to the state law
3 claims after a *Martinez* analysis. (*See* Summ. J. Order, Jan. 26, 2010, ECF No. 98). Plaintiffs
4 appealed, and the Court of Appeals granted Plaintiffs' voluntary dismissal of that appeal. (*See*
5 Order and Mandate, Apr. 5, 2010, ECF No. 106). Only the excessive force claim was tried. The
6 jury returned the following special verdict:

7 1. Did Charles Barnard forcibly resist when the officer Defendants attempted to
8 handcuff him on December 8, 2001? [No.]

9 2. If your answer to Question 1 above is "No", did the officer Defendants make a
reasonable mistake of fact that he was forcibly resisting arrest? [Yes.]

10 3. Did the following Defendants violate Charles Barnard's Fourth Amendment rights
11 by using excessive force in seizing him in his home on December 8, 2001? [Yes as
to all Defendants.]

12 4. What amount of damages did the defendants cause Charles Barnard to incur?
13 [\$2,111,656.52.]

14 (Verdict Form 1–2, Feb. 3, 2011, ECF No. 199). Defendants filed renewed motions for judgment
15 as a matter of law based both on qualified immunity and lack of evidentiary support, and also for
16 remittitur or a new trial. Plaintiff moved for attorney's fees. The Court denied the renewed
17 motions for judgment as a matter of law, granted the motion for remittitur or a new trial, and
18 granted the motion for attorney's fees in part.

19 The Court of Appeals affirmed the denial of the renewed motions for judgment as a
20 matter of law and the award of costs but reversed in part as to attorney's fees, directing the Court
21 to provide a more detailed explanation of the 40% reduction in requested fees, to award post-
22 judgment interest, and to consider awarding prejudgment interest, noting that the Court may
23 award prejudgment interest upon that portion of Plaintiff's damages the Court believes were
24 "likely" given for past pain and suffering and medical expenses. On remand, the Court awarded
25 both pre- and post-judgment interest at 0.13% under the then-existing precedent and applied its

1 previous 40% reduction in attorney's fees to fees only to trial work, awarding the requested fees
2 in full for pretrial work. On appeal, the Court of Appeals ruled that the interests rates should be
3 0.16% and was still not satisfied with the Court's reasons for the 40% reduction in requested fees
4 for trial work.

5 **II. DISCUSSION**

6 As previously explained, the total award for past pain and suffering and medical expenses
7 was \$606,207.63. At 0.16%, pre-judgment interest on this amount between December 8, 2001
8 and judgment on August 11, 2011, compounded on December 8 of each year, *see* 28 U.S.C.
9 § 1961(b), is \$9442.49. Post-judgment interest on the full award of \$1,611,656.52 at 0.16% is
10 \$7.06 per day. Finally, it is clear at this point that the Court of Appeals prefers the Court to
11 award the entire requested fees.

12 **CONCLUSION**

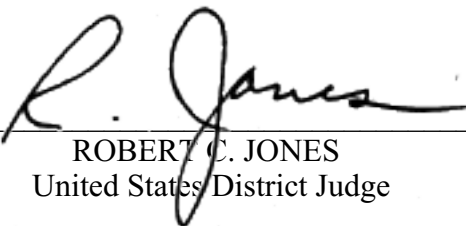
13 IT IS HEREBY ORDERED that the Order of July 25, 2013 (ECF No. 267) is
14 VACATED.

15 IT IS FURTHER ORDERED that the Judgment of August 11, 2011 (ECF No. 254) is
16 AMENDED to provide for attorney's fees of \$315,505, pre-judgment interest of \$9442.49, and
17 post-judgment interest of \$7.06 per day beginning August 12, 2011.

18 IT IS SO ORDERED.

19 Dated this 22nd day of August, 2016.

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ROBERT C. JONES
United States District Judge